

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 EDWARD ALAN MONK,

12 Defendant.
13
14

NO. 2:93-mj-04001-SAB

**ORDER DENYING
DEFENDANT’S MOTION FOR
RECONSIDERATION**

15 Before the Court are Defendant’s Motion for Reconsideration, ECF
16 No. 27, and Second Legal Notice of an Active RICO Enterprise, ECF No. 28.
17 Defendant asks the Court to reconsider its Order denying Defendant’s various
18 motions for post-conviction relief for lack of jurisdiction. Because Defendant has
19 identified no valid reason for the Court to reconsider its previous Order,
20 Defendant’s motions are denied.

21 While the Federal Rules of Criminal Procedure do not expressly authorize
22 the filing of motions for reconsideration, the Ninth Circuit has held that post-
23 judgment motions for reconsideration may be filed in criminal cases. *United States*
24 *v. Martin*, 226 F.3d 1042, 1047 n.7 (9th Cir. 2000). “Courts have held that motions
25 for reconsideration in criminal cases are governed by the rules that govern
26 equivalent motions in civil proceedings.” *U.S.A. v. Krug*, No. CR09-01148-MMM,
27 2012 WL 12973474, at *1 (C.D. Cal. Oct. 24, 2012).

28 //

**ORDER DENYING DEFENDANT’S MOTION FOR
RECONSIDERATION + 1**

1 Under the Federal Rules of Civil Procedure, the Court can grant relief on a
2 motion for reconsideration under Rule 59 or Rule 60. First, a party may ask the
3 Court to reconsider and amend a previous order. Fed R. Civ. P. 59(e) offers “an
4 extraordinary remedy, to be used sparingly in the interests of finality and
5 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th
6 Cir. 2003). A Rule 59(e) motion may be granted when: (1) there is an intervening
7 change in controlling law; (2) the moving party presents newly discovered or
8 previously unavailable evidence; and (3) the motion is necessary to correct
9 manifest errors of law or fact upon which the judgment is based. *Turner v.*
10 *Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). Second, the
11 Court may provide relief from an order under Rule 60 for the following reasons:

- 12 (1) mistake, inadvertence, surprise, or excusable neglect;
- 13 (2) newly discovered evidence that, with reasonable diligence, could
- 14 not have been discovered in time to move for a new trial under Rule
- 15 59(b);
- 16 (3) fraud (whether previously called intrinsic or extrinsic),
- 17 misrepresentation, or misconduct by an opposing party;
- 18 (4) the judgment is void;
- 19 (5) the judgment has been satisfied, released, or discharged; it is
- 20 based on an earlier judgment that has been reversed or vacated; or
- 21 applying it prospectively is no longer equitable; or
- 22 (6) any other reason that justifies relief.

23 Fed. R. Civ. P. 60(b).

24 On August 17, 2017, the Court entered an Order denying Defendant’s
25 motions for post-conviction relief. ECF No. 25. Specifically, the Court held that it
26 lacked jurisdiction to hear a 28 U.S.C. § 2255 motion to vacate sentence or a
27 petition for writ of error *coram nobis* pursuant to the All Writs Act, 28 U.S.C.
28 § 1651. Either motion is only properly brought in the Court of conviction. It is

1 undisputed that the United States District Court for the Eastern District of
2 Washington is **not** the court of conviction. Rather, Defendant was convicted in the
3 District of Nevada. Accordingly, this Court cannot legally grant the relief that
4 Defendant seeks.

5 In his motions, Defendant makes the same arguments that he previously
6 made to the Court. He has not identified a change in controlling law or newly
7 discovered evidence. Defendant likewise has not made a showing that a manifest
8 error occurred. He has not identified any mistake or fraud or that the judgment is
9 void or was vacated. A motion for reconsideration is not the proper vehicle for
10 rehashing arguments that were previously fully considered. *Par Elec. Contractors,*
11 *Inc. v. Blueline Rental LLC*, No. 2:16-cv-0246-TOR, 2017 WL 272901, at *1 (E.
12 D. Wash. March 17, 2017). This Court is not the proper venue for a petition for
13 writ of error *coram nobis*. No prejudice exists and Defendant is free to file his
14 motions in the United States District Court for the District of Nevada.

15 Moreover, the Court declines to issue a Certificate of Appealability. As the
16 Court previously noted, Defendant's motions for post-conviction relief are
17 properly characterized as a petition for writ of error *coram nobis* because
18 Defendant is no longer serving a sentence and thus, not eligible for relief pursuant
19 to 28 U.S.C. § 2255. Because this is not a § 2255 proceeding, a certificate of
20 appealability is not a prerequisite to appeal. *See* Fed. R. Crim. P. 22 (in a § 2255
21 proceeding, the applicant cannot take an appeal unless a circuit or district judge
22 issues a certificate of appealability).

23 Accordingly, **IT IS HEREBY ORDERED:**

- 24 1. Defendant's Motion for Reconsideration, ECF No. 27, is **DENIED**.
25 2. Defendant's Second Legal Notice of an Active RICO Enterprise, ECF
26 No. 28, is **DENIED**.
27 3. Defendant's request for a Certificate of Appealability is **DENIED**.
28

1 4. Defendant **shall** not file any additional documents in the above-
2 captioned case.

3 The District Court Clerk is hereby directed to enter this order and provide
4 copies to counsel and pro se Defendant and **close** this file.

5 **DATED** this 27th day of October 2017.



10 

11 Stanley A. Bastian
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28